

Appl. No. 10/789,971
Amdt. Dated 8-8-06
Reply to Office Action of 4-20-06

Remarks/Arguments

Applicant would like to thank the examiner for the thorough review of the present application. Claims 1-11 have been canceled. Independent claim 12 has been amended to overcome the prior art rejections. No new matter has been introduced.

Amended Claims are Patentable

Applicant respectfully submits the following newly claimed recitations clearly place the present invention in condition for allowance.

Applicant has amended the claims to more narrowly distinguish the present invention over the prior art of record. Applicant respectfully submits no new matter has been introduced, which would affect the statutory requirements of patentability, because all newly claimed recitations are clearly supported by the original drawings. A person of ordinary skill in the art is enabled to make and use the presently claimed invention based on the originally filed drawings. Applicant has included case law, wherein the Court has held the claims may be amended based upon the originally filed drawings without triggering a new matter rejection (please see attached literature).

- *a base member having an annular shape with a predetermined diameter and further having a substantially planar top surface, said base member being positioned below a ground surface with said top surface disposed at a substantially horizontal position, said base member including a centrally registered protrusion connected to said top surface and extending upwardly therefrom in a substantially vertical direction.* Hall's base member necessarily sits above a ground surface, as shown in FIG. 2. Hall's protrusion (as defined by the examiner) is not centrally registered, as claimed by the applicant. Hall's protrusion necessarily extends along an inner perimeter of respective blocks 5, as shown in FIGS. 1 and 2, and not centrally registered therewith. Please note, the examiner has mischaracterized the Hall reference by defining reference 14 as two separate elements, i.e. the protrusion and the engaging portion (see page of the examiner's office action). Such a characterization is improper per the MPEP.

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- *said protrusion having a centrally registered bottom face directly coupled to said top surface of said base member, said protrusion further having an annular top face provided with a diameter smaller than a diameter of said bottom face respectively.*

Such claim recitations are critical and inherently necessary for applicant's blocks to securely hold each other in place. Hall necessarily cannot employ such a protrusion because post 22 is inherently a necessary and critical part of its invention which passes along a central longitudinal axis of blocks 5. Therefore, one skilled in the art would know that Hall cannot employ applicant's claimed protrusion.

- *said engaging portions extending upwardly from a top surface of each of said ancillary members and being centrally registered with respective central longitudinal axes thereof, said receiving portions extending upwardly from a bottom surface of each of said ancillary members and being centrally registered with the central longitudinal axes thereof respectively, said receiving portions terminating subjacent to said engaging portions such that a major central region of each of said ancillary members defines a solid core formed from a rigid substance.* Hall's engaging and receiving portions 14, 15 (as defined by the examiner) are not centrally registered, as claimed by the applicant. Hall necessarily and critically requires centrally offset engaging and receiving portions because post 22 must centrally pass through a center of the blocks 5. Please note, the examiner has mischaracterized the Hall reference by defining reference 14 as two separate elements, i.e. the protrusion and the engaging portion (see page of the examiner's office action). Such a characterization is improper per the MPEP.

- *wherein said square first portion and said rectangular portion have respective longitudinal lengths greater than respective widths thereof such that the above-ground structure is effectively maintained at a substantially stable position and prohibited from disengaging said top member during inclement weather conditions.* Such a claimed recitation is essential and critically necessary for applicant's claimed invention to adequately support the above-ground post within said top member. If applicant's square first portion and rectangular portion were shallow, as taught by McCoy, one skilled in the art would know that applicant's above-ground structure would be susceptible to prematurely detaching from the top member. Moreover, there is no

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teaching, suggestion or motivation to combine McCoy's teachings with Hall's teachings. Hall simply has no need for applicant's claimed square first portion and rectangular portion because it is intended to be employed below water level and will necessarily remain wet during operating conditions (see column 1, lines 9-15). Therefore, one skilled in the art would understand that it is counter intuitive and unnecessary to combine McCoy's teachings with Hall's teaching to drain fluids away from the blocks 5, when they are submerged under water.

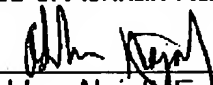
In view of these considerations, it is respectfully submitted that the rejection of the pending claims should be considered as no longer tenable with respect to the above mentioned arguments and claim amendments. All pending dependent claims necessarily include the recitations of their independent claims and therefore are also in condition for allowance.

Should the examiner consider necessary or desirable to make formal changes anywhere in the specification, claims and/or drawings, then it is respectfully asked that such changes be made by examiner's Amendment, if the examiner feels this would facilitate passage of the case to issuance. Alternatively, should the examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned attorney.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
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By


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